

# THE GENERAL STATUTES OF NORTH CAROLINA

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## 1987 CUMULATIVE SUPPLEMENT

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Annotated, under the Supervision of the Department of  
Justice, by the Editorial Staff of the Publishers

*Under the Direction of*

A. D. KOWALSKY, S. C. WILLARD, W. L. JACKSON,  
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## Volume 1D

### Chapters 21 to 27

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Annotated through 356 S.E.2d 26. For complete scope of  
annotations, see scope of volume page.

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**Place Behind Supplement Tab in Binder Volume.**

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## Preface

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This Cumulative Supplement to Replacement Volume 1D contains the general laws of a permanent nature enacted by the General Assembly through the 1987 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.





# Scope of Volume

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## **Statutes:**

Permanent portions of the General Laws enacted by the General Assembly through the 1987 Regular Session affecting Chapters 21 to 27 of the General Statutes.

## **Annotations:**

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 319, p. 464.  
North Carolina Court of Appeals Reports through Volume 85, p. 173.  
South Eastern Reporter 2nd Series through Volume 356, p. 26.  
Federal Reporter 2nd Series through Volume 817, p. 761.  
Federal Supplement through Volume 658, p. 304.  
Federal Rules Decisions through Volume 115, p. 78.  
Bankruptcy Reports through Volume 72, p. 618.  
Supreme Court Reporter through Volume 107, p. 2210.  
North Carolina Law Review through Volume 65, p. 847.  
Wake Forest Law Review through Volume 22, p. 424.  
Campbell Law Review through Volume 9, p. 206.  
Duke Law Journal through 1987, p. 190.  
North Carolina Central Law Journal through Volume 16, p. 222.  
Opinions of the Attorney General.

## Scope of Volume

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## The General Statutes of North Carolina 1987 Cumulative Supplement

### User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1A, Part I for the complete User's Guide.

#### Chapter 23.

#### Contracts Requiring Writing.

#### § 23-1. Contracts charging representative personally; promise to answer for debt of another.

##### CASE NOTES

##### 1. IN GENERAL.

*Ex parte*, 218 N.C. 471, 349 S.E.2d 503 (1986).

*Good v. Fisher Bank, Inc.*, 71

#### § 23-2. Contract for sale of land; leases.

##### Legal Periodicals.

*For note on value of doing deed in land sales contracts in North Carolina.*

*In Sight of Fisher v. Jones*, 71 N.C. 289, 348 S.E.2d 711 (1986); *see* *Chapman*, 71 N.C. 289, 348 S.E.2d 711.

##### CASE NOTES

##### 1. IN GENERAL.

*Chad v. Johnson v. North Star Ins. Co.*, 71 N.C. 289, 348 S.E.2d 711 (1986).

##### 2. NECESSITY OF COMPLIANCE WITH SECTION.

##### A. In General.

*It is not necessary, etc.*

The nature of *Franklin* is that all the provisions of the contract to be written in a single instrument. The period number required by the statute is not to be taken into account if the contract is not to be written in a single instrument. *See* *Franklin*, 71 N.C. 289, 348 S.E.2d 711 (1986).







# The General Statutes of North Carolina 1987 Cumulative Supplement

## VOLUME 1D

### Chapter 22.

### Contracts Requiring Writing.

#### § 22-1. Contracts charging representative personally; promise to answer for debt of another.

##### CASE NOTES

##### I. IN GENERAL.

Trimpi, 318 N.C. 473, 349 S.E.2d 852 (1986).

Cited in Forbes Homes, Inc. v.

#### § 22-2. Contract for sale of land; leases.

##### Legal Periodicals. —

For note on waiver of closing date in land sales contracts in North Carolina,

in light of Fletcher v. Jones, 314 N.C. 389, 333 S.E.2d 731 (1985), see 8 Campbell L. Rev. 546 (1986).

##### CASE NOTES

##### I. IN GENERAL.

Cited in Sprouse v. North River Ins. Co., 81 N.C. App. 311, 344 S.E.2d 555 (1986).

The statute of frauds does not require all the provisions of the contract to be set out in a single instrument. The memorandum required by the statute is sufficient if the contract provisions can be determined from separate but related writings. Rose v. Lang, — N.C. App. —, 355 S.E.2d 795 (1987).

##### III. SUFFICIENCY OF COMPLIANCE WITH SECTION.

##### A. In General.

It is not necessary, etc. —

## Chapter 24.

### Interest.

#### Article 1.

#### General Provisions.

Sec.

24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

24-1.2. Installment rates.

Sec.

24-5. Contracts, except penal bonds, and judgments to bear interest.

24-10.1. Late fees.

24-11.1. Disclosure requirements for credit cards.

24-11.2. Disclosure requirements for charge cards.

### ARTICLE 1.

#### *General Provisions.*

### § 24-1. Legal rate is eight percent.

#### CASE NOTES

Applied in *St. Paul Fire & Marine Ins. Co. v. Branch Banking & Trust Co.*, 643 F. Supp. 648 (E.D.N.C. 1986).

### § 24-1.1. Contract rates.

#### CASE NOTES

To establish that an agreement is usurious, it must be shown that (1) there was a loan, (2) there was an understanding that the money lent would be returned, (3) a greater rate of interest than that allowed by law was charged for the loan, and (4) there was corrupt intent to take more than the legal rate for the use of the money. *Bagri v. Desai*, 83 N.C. App. 150, 349 S.E.2d 309 (1986).

**Intent.** — The requirement of corrupt intent to take more than the legal rate for the use of money is simply the intentional charging of more for money lent than the law allows. *Bagri v. Desai*, 83 N.C. App. 150, 349 S.E.2d 309 (1986).

**Quoted in** *Pappas v. NCNB Nat'l Bank*, 653 F. Supp. 699 (M.D.N.C. 1987).

**Cited in** *Pappas v. NCNB Nat'l Bank*, 653 F. Supp. 699 (M.D.N.C. 1987).

### § 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

(a) Notwithstanding any other provision of this Chapter, parties to a home loan may contract in writing as follows:

- (1) Where the principal amount is ten thousand dollars (\$10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;
- (2) Where the principal amount is less than ten thousand dollars (\$10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a national



mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

- (3) Where the principal amount is less than ten thousand dollars (\$10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.
- (4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent ( $\frac{1}{2}$  of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent ( $\frac{1}{2}$  of 1%), the Commissioner shall round downward to the lower one-half of one percent ( $\frac{1}{2}$  of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

(1973, c. 1119, ss. 1, 2; 1975, c. 260, s. 1; 1977, c. 542, ss. 1, 2; 1979, c. 362; 1983, c. 126, s. 4; 1985, c. 154, s. 1; c. 381, ss. 1, 2; 1987, c. 444, ss. 1, 3; c. 853, s. 4.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendments, it is not set out.

**Editor's Note.** — Session Laws 1985, c. 154, s. 14, which is noted in the main volume under this

section, as amended by Session Laws 1987, c. 444, s. 3, provides:

"Section 1 of this act is effective upon ratification and shall expire on July 31, 1987. Section 10, 12 and 13 of this act are effective upon ratification and shall expire on July 31, 1989; provided, however, that transactions entered into under the authority of the expired sections shall not be affected by the expiration of these sections. Section 8 of this act shall become effective July 31, 1989."

Session Laws 1987, c. 444, s. 4 provides that the amendment to subdivision

(a)(4) by s. 1 of c. 444 shall expire on July 31, 1989.

**Effect of Amendments. —**

Session Laws 1987, c. 444, s. 1, effective July 31, 1987, rewrote subdivision (a)(4).

Session Laws 1987, c. 853, s. 4, effective August 14, 1987, inserted "during" following "such loans during a month" and preceding "the term of the loan" in the last sentence of the second full paragraph of subdivision (a)(4), as contained in Session Laws 1987, c. 444, s. 1.

## § 24-1.2. Installment rates.

Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan, or forbearance, may contract in writing for the payment of interest not in excess of:

- (2a) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivisions (1) and (2) of this section. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent ( $\frac{1}{2}$  of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent ( $\frac{1}{2}$  of 1%), the Commissioner shall round downward to the lower one-half of one percent ( $\frac{1}{2}$  of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

(1969, c. 1303, s. 2; 1971, c. 448; c. 1122, ss. 1, 2; c. 1165; 1977, c. 778, ss. 2, 4; 1979, c. 138, ss. 2, 3; 1981, c. 464, s. 1; c. 934, s. 2; 1983, c. 126, s. 3; 1985, c. 663, s. 2; 1987, c. 853, s. 4.)

**Only Part of Section Set Out. —** As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments. —**

The 1987 amendment, effective Au-

gust 14, 1987, inserted "during" following "such loans during a month" and preceding "the term of the loan" in the last sentence of subdivision (2a).



## CASE NOTES

Cited in *Carter v. Holland* (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

## § 24-2. Penalty for usury; corporate bonds may be sold below par.

## CASE NOTES

### I. GENERAL CONSIDERATION.

#### Four Requisites of Usurious Transaction. —

In accord with 2nd paragraph in the main volume. See *Bagri v. Desai*, 83 N.C. App. 150, 349 S.E.2d 309 (1986).

#### That Is, Intentional Charging, etc.—

In accord with 1st paragraph in the main volume. See *Bagri v. Desai*, 83 N.C. App. 150, 349 S.E.2d 309 (1986).

### VI. PLEADING AND PRACTICE.

**Class Actions Allowed.** — When the

General Assembly has wished to prevent class actions to enforce statutory claims for relief, where the relief sought was personal and penal in nature, it has said so expressly and unequivocally. The failure of the General Assembly to expressly prohibit class actions to enforce this statute convinces the Supreme Court that it intended to allow them for such purposes. *Crow v. Citicorp Acceptance Co.*, — N.C. —, 354 S.E.2d 459 (1987).

## § 24-5. Contracts, except penal bonds, and judgments to bear interest.

(a) **Contracts.** — In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment then interest on an award in a contract action shall be at the contract rate after judgment, otherwise it shall be at the legal rate; provided, however, that on awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, interest shall be at the legal rate, provided however, such rate shall not exceed the contract rate.

(1786, c. 253, P.R.; 1789, c. 314, s. 4, P.R.; 1807, c. 721, P.R.; R.C., c. 31, s. 90; Code, s. 530; Rev., s. 1954; C.S., s. 2309; 1981, c. 327, s. 1; 1985, c. 214, s. 1; 1987, c. 758.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

#### Effect of Amendments. —

The 1987 amendment, effective October 1, 1987, and applicable to all actions filed on or after that date, except as to those actions which are based on contracts entered into on or after October 1, 1985, and prior to October 1, 1987,

which contracts specifically provided that interest after judgment shall be at the contract rate, rewrote the third sentence of subsection (a), which formerly read "Interest on an award in a contract action shall be at the contract rate, if the parties have so provided in the contract; otherwise, it shall be at the legal rate."

## CASE NOTES

## I. IN GENERAL.

**Applied** in *St. Paul Fire & Marine Ins. Co. v. Branch Banking & Trust Co.*, 643 F. Supp. 648 (E.D.N.C. 1986).

**Cited** in *McNabb v. Town of Bryson City*, 82 N.C. App. 385, 346 S.E.2d 285 (1986).

## II. CONTRACTS.

**Interest Allowed from Date of Breach.** —

In accord with 2nd paragraph in the

main volume. See *Thomas M. McInnis & Assocs. v. Hall*, 318 N.C. 421, 349 S.E.2d 552 (1986).

## IV. PREJUDGMENT INTEREST.

**In personal injury case**, the trial court erred in awarding prejudgment interest to that portion of the award which was not covered by defendant's liability insurance. *Wagner v. Barbee*, 82 N.C. 640, 347 S.E.2d 844 (1986), cert. denied, 318 N.C. 702, 351 S.E.2d 761 (1987).

## § 24-8. Loans not in excess of \$300,000; what interest, fees and charges permitted.

## CASE NOTES

**What Plaintiff Must Show in Action for Usury.** —

In accord with the main volume. See *Bagri v. Desai*, 83 N.C. App. 150, 349 S.E.2d 309 (1986).

**The corrupt intent required, etc.** —

In accord with 1st paragraph in the main volume. See *Bagri v. Desai*, 83 N.C. App. 150, 349 S.E.2d 309 (1986).

**Transaction Held Usurious.** —

Plaintiff's requiring, in connection with lending defendant \$50,000.00 to buy a motel, that defendant also pay him one-sixth of the motel's profits and one-sixth of any gain on the sale of the motel was clearly prohibited by this section. *Bagri v. Desai*, 83 N.C. App. 150, 349 S.E.2d 309 (1986).

## § 24-10. Maximum fees on loans secured by real property.

**Editor's Note.** —

Session Laws 1985, c. 154, s. 14, which is noted in the main volume under this section, as amended by Session Laws 1987, c. 444, s. 3, provides:

"Section 1 of this act is effective upon ratification and shall expire on July 31, 1987.

Sections 10, 12 and 13 of this act are effective upon ratification and shall expire on July 31, 1989; provided, however, that transactions entered into under the authority of the expired sections shall not be affected by the expiration of these sections. Section 8 of this act shall become effective July 31, 1989."

### § 24-10.1. Late fees.

(b) No lender may charge a late payment charge:

- (1) In excess of four percent (4%) of the amount of the payment past due; or
- (2) In excess of the amount disclosed with particularity to the borrower pursuant to the provisions of the Federal Consumer Credit Protection Act if the transaction is one to which the provisions of that act apply, which in no event shall exceed four percent (4%); or
- (3) For any payment unless past due for 15 days or more; provided, however, if the loan is one on which interest on each installment is paid in advance, no late payment charge

may be charged until the payment is 30 days past due or more; or

- (4) More than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the contract and such deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for such default. If a late payment charge has been once imposed with respect to a particular late payment, no such charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default; provided that when a borrower fails to make an installment payment, and the terms of the loan agreement provide that subsequent payments shall first be applied to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured; or
- (5) On any loan which by its terms calls for repayment of the entire balance in a single payment and not for installments of interest or principal and interest; or
- (6) Unless the lender notifies the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment which late payment must be paid unless the borrower can show that the installment was paid in full and on time. No late payment charge may be collected from any borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late charge. (1985, c. 755, s. 1; 1987, c. 447.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective June 22, 1987, added the proviso at the end of the third sentence of subdivision (b)(4), deleted a former fourth sentence of that subdivision, which read "A late payment charge for any particular late payment shall be

deemed to have been waived by the lender unless, within 45 days following the date on which the payment was due, the lender either collects the late payment charge or sends written notice of the charge to the borrower," added "or" at the end of subdivision (b)(5), and added subdivision (b)(6).

### § 24-11.1. Disclosure requirements for credit cards.

(a) This section applies to any application, solicitation of an application, offer of credit, or communication extending credit that is:

- (1) For an open-end credit plan accessed through a credit card or a revolving credit loan accessed through a credit card;
- (2) Printed;
- (3) Mailed or otherwise delivered to a person at any address within this State;
- (4) Not delivered pursuant to an existing credit agreement; and
- (5) Not printed in a newspaper, magazine, or periodical generally circulated outside as well as inside the State.



(b) Disclosures. — The following disclosures shall be clearly and conspicuously made in or with all documents described in subsection (a) of this section:

- (1) The annual percentage rate or, if the rate may vary, a statement that it may vary, the circumstances under which the rate may increase, any limitations on the increase, and the effects of the increase on the other terms of the agreement.
- (2) The date or occasion upon which the finance charge begins to accrue on a transaction and the duration of any grace period.
- (3) Whether an annual fee is charged and the amount of the fee.
- (4) Any delinquency charge, late charge, or collection charge which may be assessed for the late payment of any installment, including the terms and conditions for the imposition of such charge.

(c) Federal Requirements. — The form and content of the disclosures described in subsection (b) may be consistent with similar disclosures required by the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.R.F. 226. Any amendment to the Act or Regulation that addresses credit card disclosures shall to the extent it covers applications, solicitations, and other communications covered by this section, replace the disclosure requirements of this section for creditors subject to the Act.

(d) Penalty. — A violation of this section shall constitute a violation of G.S. 75-1.1 except that the creditor shall not be liable for any fine, civil penalty, treble damages, or attorney's fee where the creditor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(e) Severability. — If any part of this section is found unconstitutional or is preempted by federal law with regard to a creditor because the creditor is located outside of the State, that part does not apply to creditors located within the State.

(f) Nothing in this section shall be construed to authorize any fee, charge, surcharge or penalty not otherwise authorized by law. (1987, c. 735, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 735, s. 2 makes this section effective January 1, 1988.

## § 24-11.2. Disclosure requirements for charge cards.

(a) Applications and Other Communications. — This section applies to any application, solicitation of an application, offer of credit, or communication extending credit that is:

- (1) For credit accessed through a charge card;
- (2) Printed;
- (3) Mailed or otherwise delivered to a person at any address within this State;
- (4) Not delivered pursuant to an existing credit agreement; and



- (5) Not printed in a newspaper, magazine, or periodical generally circulated outside as well as inside the State.

For purposes of this section, the term "charge card" means any card, plate or other device pursuant to which the charge card issuer extends credit which is not subject to a finance charge and where the charge cardholder cannot automatically access credit that is repayable in installments.

(b) Disclosures. — The following disclosures shall be clearly and conspicuously made in or with all documents described in subsection (a) of this section:

- (1) The annual fee and other charges, if any, applicable to the issuance or use of the charge card.
- (2) That charges incurred by the use of the charge card are due and payable upon receipt of a periodic statement of charges.
- (3) Any delinquency charge, late charge, or collection charge which may be assessed for late payment, including the terms and conditions for the imposition of such charge.

(c) Federal Requirements. — The form and content of the disclosures described in subsection (b) may be consistent with similar disclosures required by the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. 226. Any amendment to the Act or Regulation that addresses credit card disclosures shall, to the extent it covers applications, solicitations, and other communications covered by this section, replace the disclosure requirements of this section for creditors subject to the Act.

(d) Penalty. — A violation of this section shall constitute a violation of G.S. 75-1.1 except that the creditor shall not be liable for any fine, civil penalty, treble damages, or attorney's fee where the creditor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(e) Severability. — If any part of this section is found unconstitutional or is preempted by federal law with regard to a creditor because the creditor is located outside the State, that part does not apply to creditors located within the State.

(f) Nothing in this section shall be construed to authorize any fee, charge, surcharge or penalty not otherwise authorized by law. (1987, c. 735, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 735, s. 2 makes this section effective January 1, 1988.

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## ARTICLE 2.

### *Loans Secured by Secondary or Junior Mortgages.*

#### § 24-13. Principal amount defined.

**Editor's Note. —**

Session Laws 1985, c. 154, s. 14, which is noted in the main volume under this section, as amended by Session Laws 1987, c. 444, s. 3, provides:

"Section 1 of this act is effective upon ratification and shall expire on July 31, 1987. Sections 10, 12 and 13 of this act

are effective upon ratification and shall expire on July 31, 1989; provided, however, that transactions entered into under the authority of the expired sections shall not be affected by the expiration of these sections. Section 8 of this act shall become effective July 31, 1989."

#### § 24-14. Limitations on charges and interest.

**Editor's Note. —**

Session Laws 1985, c. 154, s. 14, which is noted in the main volume under this section, as amended by Session Laws 1987, c. 444, s. 3, provides:

"Section 1 of this act is effective upon ratification and shall expire on July 31, 1987. Sections 10, 12 and 13 of this act

are effective upon ratification and shall expire on July 31, 1989; provided, however, that transactions entered into under the authority of the expired sections shall not be affected by the expiration of these sections. Section 8 of this act shall become effective July 31, 1989."

#### § 24-16.1. Loans exempt from §§ 24-12 to 24-17.

**Editor's Note. —**

Session Laws 1985, c. 154, s. 14, which is noted in the main volume under this section, as amended by Session Laws 1987, c. 444, s. 3, provides:

"Section 1 of this act is effective upon ratification and shall expire on July 31, 1987. Sections 10, 12 and 13 of this act

are effective upon ratification and shall expire on July 31, 1989; provided, however, that transactions entered into under the authority of the expired sections shall not be affected by the expiration of these sections. Section 8 of this act shall become effective July 31, 1989."

## Chapter 25.

### Uniform Commercial Code.

#### Article 3.

##### Commercial Paper.

Part 5. Presentment, Notice of  
Dishonor and Protest.

Sec.

25-3-512. Collection of processing fee for  
returned checks.

#### Article 8.

##### Investment Securities.

Part 2. Issue — Issuer.

25-8-204. Effect of issuer's restrictions  
on transfer.

#### Article 9.

##### Secured Transactions; Sales of Ac- counts and Chattel Paper.

Part 4. Filing.

Sec.

25-9-403. What constitutes filing; dura-  
tion of filing; effect of  
lapsed filing; duties of fil-  
ing officer.

25-9-405. Assignment of security inter-  
est; duties of filing officer;  
fees.

25-9-406. Release of collateral; duties of  
filing officer; fees.

25-9-407. Information from filing offi-  
cer.

### ARTICLE 1.

#### *General Provisions.*

### PART 1.

#### SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT.

### § 25-1-101. Short title.

#### CASE NOTES

**Cited** in *Wohlfahrt v. Schneider*, 82  
N.C. App. 69, 345 S.E.2d 448 (1986).

### § 25-1-102. Purposes; rules of construction; varia- tion by agreement.

**Legal Periodicals.** — For comment,  
"Return to the Conservative View of Se-  
curity Agreements in Commercial

Transactions," see 8 *Campbell L. Rev.*  
505 (1986).

## § 25-1-105. Territorial application of the act; parties' power to choose applicable law.

### CASE NOTES

#### Section Changes, etc. —

This section modifies traditional conflict of law rules. *Wohlfahrt v. Schneider*, 82 N.C. App. 69, 345 S.E.2d 448 (1986).

#### Stipulation of Law, etc. —

Where the transaction bears a reasonable relation to more than one state, the UCC permits the parties to agree with respect to which state's law shall govern their rights and duties. *Wohlfahrt v. Schneider*, 82 N.C. App. 69, 345 S.E.2d 448 (1986).

Where the goods in question were lo-

cated in Texas and performance was due in this State, the transaction bore a reasonable relationship to both states, and pursuant to the agreement of the parties, the substantive issues involved would be resolved by application of Texas law. Procedural issues, however, would be determined by application of the law of North Carolina. *Wohlfahrt v. Schneider*, 82 N.C. App. 69, 345 S.E.2d 448 (1986).

*Cited* in *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 348 S.E.2d 782 (1986).

## PART 2.

### GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

## § 25-1-201. General definitions.

#### Legal Periodicals. —

For comment, "Return to the Conservative View of Security Agreements in Commercial Transactions," see 8 *Campbell L. Rev.* 505 (1986).

For article, "Court Adjustment of Long-Term Contracts: An Analysis Under Modern Contract Law," see 1987 *Duke L.J.* 1 (1987).

### CASE NOTES

#### "Conspicuousness." —

Language on herbicide to the effect that seller made "no other express or implied warranty of fitness or merchantability or any other express or implied warranty," which was in darker and larger type than the other language on the label, was "conspicuous," as defined by subdivision (10) of this section, and served to effectively disclaim any implied warranties of merchantability or fitness. *Tyson v. Ciba-Geigy Corp.*, 82 N.C. App. 626, 347 S.E.2d 473 (1986).

**"Delivery".** — Delivery of a deed or instrument to the named payee, subject to the control of the person delivering it or subject to an agreed condition, does not constitute delivery in the eyes of the law. *State v. First Resort Properties*, 81 N.C. App. 499, 344 S.E.2d 354 (1986).

**"Rights".** — The term "all rights" in an assignment included the contractual right of assignor to receive C.O.D. payment from defendant. *Gunby v. Pilot Freight Carriers, Inc.*, 82 N.C. App. 427, 346 S.E.2d 188 (1986).

#### "Security Interest". —

Article 9 of this Chapter applies to a transaction intended to create a security interest, regardless of whom the certificate lists as the owner. *Carter v. Holland (In re Carraway)*, 65 *Bankr.* 51 (*Bankr. E.D.N.C.* 1986).

*Quoted* in *Branch Banking & Trust Co. v. Columbian Peanut Co.*, 649 *F. Supp.* 1116 (*E.D.N.C.* 1986).

*Cited* in *Pillsbury Co. v. FCX, Inc.*, 62 *Bankr.* 315 (*Bankr. E.D.N.C.* 1986).



## § 25-1-203. Obligation of good faith.

### Legal Periodicals. —

For note, "Check Kiting: The Inade-

quacy of the Uniform Commercial Code," see 1986 Duke L.J. 728 (1986).

### CASE NOTES

Cited in *Carter v. Holland* (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

## § 25-1-205. Course of dealing and usage of trade.

**Legal Periodicals.** — For article, "Stock Equipment for the Bargain in Fact: Trade Usage, Express Terms, and Consistency Under Section 1-205 of the Uniform Commercial Code," see 64 N.C.L. Rev. 777 (1986).

For article, "Court Adjustment of Long-Term Contracts: An Analysis Under Modern Contract Law," see 1987 Duke L.J. 1 (1987).

## ARTICLE 2.

### *Sales.*

## PART 1.

### SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER.

## § 25-2-107. Goods to be severed from realty; recording.

### CASE NOTES

Cited in *Fisher v. Elmore*, 802 F.2d 771 (4th Cir. 1986).

## PART 2.

### FORM, FORMATION AND READJUSTMENT OF CONTRACT.

## § 25-2-201. Formal requirements; statute of frauds.

### Legal Periodicals. —

For article, "Court Adjustment of Long-Term Contracts: An Analysis Un-

der Modern Contract Law," see 1987 Duke L.J. 1 (1987).

## § 25-2-202. Final written expression; parol or extrinsic evidence.

**Legal Periodicals.** — For note discussing this section, in light of *Fiber Indus., Inc. v. Salem Carpet Mills, Inc.*, 68 N.C. App. 690, 315 S.E.2d 735, cert. denied, 311 N.C. 754, 321 S.E.2d 132 (1984), see 21 Wake Forest L. Rev. 831 (1986).

## § 25-2-206. Offer and acceptance in formation of contract.

### CASE NOTES

**Cited in** *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 348 S.E.2d 782 (1986); *Fisher v. Elmore*, 802 F.2d 771 (4th Cir. 1986).

## § 25-2-208. Course of performance or practical construction.

**Legal Periodicals.** — For article, "Court Adjustment of Long-Term Contracts: An Analysis Under Modern Contract Law," see 1987 Duke L.J. 1 (1987).

## PART 3.

### GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT.

## § 25-2-302. Unconscionable contract or clause.

**Legal Periodicals.** — For article, "Court Adjustment of Long-Term Contracts: An Analysis Under Modern Contract Law," see 1987 Duke L.J. 1 (1987).

## § 25-2-305. Open price term.

**Legal Periodicals.** — For article, "Court Adjustment of Long-Term Contracts: An Analysis Under Modern Contract Law," see 1987 Duke L.J. 1 (1987).

## § 25-2-308. Absence of specified place for delivery.

**Legal Periodicals.** — For article, "Court Adjustment of Long-Term Contracts: An Analysis Under Modern Contract Law," see 1987 Duke L.J. 1 (1987).

## § 25-2-309. Absence of specific time provisions; notice of termination.

**Legal Periodicals.** — For article, "Court Adjustment of Long-Term Con-

tracts: An Analysis Under Modern Contract Law," see 1987 Duke L.J. 1 (1987).

## § 25-2-313. Express warranties by affirmation, promise, description, sample.

**Cross References.** — For the New Motor Vehicles Warranties Act, see § 20-351 et seq.

**Legal Periodicals.** —

For article, "Damages and Problems of Proof with Planted Nonconforming Seeds," see 9 Campbell L. Rev. 63 (1986).

### CASE NOTES

#### Question of Fact. —

The plaintiff's evidence was held to have made out a prima facie case that the defendant contracted or expressly warranted to provide the plaintiff with Number 2 milling wheat, a commodity with few defective kernels, and breached its obligation by supplying wheat of an inferior standard that contained a high percentage of defective kernels, breaching the implied warranty of merchantability and the implied warranty of fitness for a particular purpose; under the

circumstances, whether these warranties were made or breached were questions of fact, not law. *W.A. Davis Realty, Inc. v. Wakelon Agri-Products, Inc.*, 84 N.C. App. 97, 351 S.E.2d 816 (1987).

#### Statement Held Mere Opinion. —

Statement made by salesman to farmer that a certain herbicide would "do a good job" was a mere expression of opinion and did not create an express warranty. *Tyson v. Ciba-Geigy Corp.*, 82 N.C. App. 626, 347 S.E.2d 473 (1986).

## § 25-2-314. Implied warranty: Merchantability; usage of trade.

**Cross References.** — For the New Motor Vehicles Warranties Act, see § 20-351 et seq.

**Legal Periodicals.** —

For article, "Damages and Problems of Proof with Planted Nonconforming Seeds," see 9 Campbell L. Rev. 63 (1986).

### CASE NOTES

**Product Liability Act Available As Defense.** — The legislature intended that § 99B-2(a), a part of the Products Liability Act, be available as a defense to actions for breach of an implied warranty of merchantability brought under the UCC. *Morrison v. Sears, Roebuck & Co.*, — N.C. —, 354 S.E.2d 495 (1987).

#### Merchantability Held Question for Jury. —

The plaintiff's evidence was held to have made out a prima facie case that the defendant contracted or expressly warranted to provide the plaintiff with Number 2 milling wheat, a commodity with few defective kernels, and breached

its obligation by supplying wheat of an inferior standard that contained a high percentage of defective kernels, breaching the implied warranty of merchantability and the implied warranty of fitness for a particular purpose; under the circumstances, whether these warranties were made or breached were questions of fact, not law. *W.A. Davis Realty, Inc. v. Wakelon Agri-Products, Inc.*, 84 N.C. App. 97, 351 S.E.2d 816 (1987).

**No Right of Contribution for Third Party.** — Claim for relief, based on a breach of implied warranty, gave rise to no right of contribution on the part of third party plaintiff, because it sounded

in contract and not in tort. *Holland v. Edgerton*, — N.C. App. —, 355 S.E.2d 514 (1987).

## § 25-2-315. Implied warranty: Fitness for particular purpose.

**Cross References.** — For the New Motor Vehicles Warranties Act, see § 20-351 et seq.

**Legal Periodicals.** —

For article, "Damages and Problems of Proof with Planted Nonconforming Seeds," see 9 *Campbell L. Rev.* 63 (1986).

### CASE NOTES

**Question of Fact.** — The plaintiff's evidence was held to have made out a prima facie case that the defendant contracted or expressly warranted to provide the plaintiff with Number 2 milling wheat, a commodity with few defective kernels, and breached its obligation by supplying wheat of an inferior standard that contained a high percentage of defective kernels, breaching the implied warranty of merchantability and the implied warranty of fitness for a particular purpose; under the circumstances, whether these warranties were made or

breached were questions of fact, not law. *W.A. Davis Realty, Inc. v. Wakelon Agri-Products, Inc.*, 84 N.C. App. 97, 351 S.E.2d 816 (1987).

**Evidence Held to Show Implied Warranty.** — Evidence was sufficient for jury to find that salesman, consulted by farmer with regard to the no-till cultivation of soybeans, made an implied warranty relating to the fitness of a certain herbicide for plaintiff's purpose and that this warranty was breached. *Tyson v. Ciba-Geigy Corp.*, 82 N.C. App. 626, 347 S.E.2d 473 (1986).

## § 25-2-316. Exclusion or modification of warranties.

**Legal Periodicals.** —

For article, "Damages and Problems of Proof with Planted Nonconforming

Seeds," see 9 *Campbell L. Rev.* 63 (1986).

### CASE NOTES

**Language Held Effective Disclaimer.** — Language on herbicide to the effect that seller made "no other express or implied warranty of fitness or merchantability or any other express or implied warranty," which was in darker and larger type than the other language

on the label, was "conspicuous," as defined by § 25-1-201(10), and served to effectively disclaim any implied warranties of merchantability or fitness. *Tyson v. Ciba-Geigy Corp.*, 82 N.C. App. 626, 347 S.E.2d 473 (1986).



**PART 4.****TITLE, CREDITORS AND GOOD FAITH PURCHASERS.****§ 25-2-401. Passing of title; reservation for security; limited application of this section.****CASE NOTES**

**Cited in** Fisher v. Elmore, 802 F.2d 771 (4th Cir. 1986).

**§ 25-2-403. Power to transfer; good faith purchase of goods; "entrusting."****CASE NOTES**

**Cited in** Pillsbury Co. v. FCX, Inc., 62 Bankr. 315 (Bankr. E.D.N.C. 1986).

**PART 5.****PERFORMANCE.****§ 25-2-501. Insurable interest in goods; manner of identification of goods.****CASE NOTES**

**Cited in** Fisher v. Elmore, 802 F.2d 771 (4th Cir. 1986).

**PART 6.****BREACH, REPUDIATION AND EXCUSE.****§ 25-2-608. Revocation of acceptance in whole or in part.****CASE NOTES**

**Cited in** Wohlfahrt v. Schneider, 82 N.C. App. 69, 345 S.E.2d 448 (1986).

**§ 25-2-615. Excuse by failure of presupposed conditions.**

**Legal Periodicals. —**

For note, "Check Kiting: The Inadequacy of the Uniform Commercial Code," see 1986 Duke L.J. 728 (1986).

For article, "Court Adjustment of Long-Term Contracts: An Analysis Under Modern Contract Law," see 1987 Duke L.J. 1 (1987).

**PART 7.**

**REMEDIES.**

**§ 25-2-702. Seller's remedies on discovery of buyer's insolvency.**

**CASE NOTES**

**Priority of Floating Lien over Rights of Reclaiming Sellers. —** A floating lien on inventory, assuming the lienholder is a "good faith purchaser," has priority over the rights of reclaiming sellers. Pillsbury Co. v. FCX, Inc., 62 Bankr. 315 (Bankr. E.D.N.C. 1986).

**The rights of a reclaiming seller under this section have a lower status than those of a junior lien creditor, and consequently a reclaiming seller's rights have no value if the floating lien, to which those rights are inferior, exceeds the value of the lienholder's collateral.** Pillsbury Co. v. FCX, Inc., 62 Bankr. 315 (Bankr. E.D.N.C. 1986).

**In bankruptcy proceedings, reclaiming sellers are not automatically entitled to an administrative priority or substitute lien if their reclamation rights are frustrated by the presence of a prior lien. The right to an administrative priority or substitute lien exists only if there also exists a right to reclaim.** Pillsbury Co. v. FCX, Inc., 62 Bankr. 315 (Bankr. E.D.N.C. 1986).

**But rights of reclaiming sellers are not automatically extinguished simply because those rights may be subject to the rights of a secured creditor.** Pillsbury Co. v. FCX, Inc., 62 Bankr. 315 (Bankr. E.D.N.C. 1986).

**§ 25-2-706. Seller's resale including contract for resale.**

**CASE NOTES**

**Cited in** Tom Togs, Inc. v. Ben Elias Indus. Corp., 318 N.C. 361, 348 S.E.2d 782 (1986).

**§ 25-2-711. Buyer's remedies in general; buyer's security interest in rejected goods.**

**Cross References. —** For the New Motor Vehicles Warranties Act, see § 20-351 et seq.

## § 25-2-715. Buyer's incidental and consequential damages.

**Legal Periodicals.** —  
For article, "Damages and Problems of  
Proof with Planted Nonconforming

Seeds," see 9 Campbell L. Rev. 63  
(1986).

## § 25-2-716. Buyer's right to specific performance or replevin.

**Legal Periodicals.** —  
For article, "Court Adjustment of  
Long-Term Contracts: An Analysis Un-

der Modern Contract Law," see 1987  
Duke L.J. 1 (1987).

## § 25-2-719. Contractual modification or limitation of remedy.

**Legal Periodicals.** —  
For article, "Damages and Problems of  
Proof with Planted Nonconforming

Seeds," see 9 Campbell L. Rev. 63  
(1986).

## § 25-2-725. Statute of limitations in contracts for sale.

**Cross References.** —  
For three year statute of limitations  
for actions upon contracts generally, see

§ 1-52. For two year statute of limita-  
tions for actions against a local unit of  
government upon a contract, see § 1-53.

### CASE NOTES

**Cited in** Cellu Prods. Co. v. G.T.E.  
Prods. Corp., 81 N.C. App. 474, 344  
S.E.2d 566 (1986).

### ARTICLE 3.

#### *Commercial Paper.*

### PART 1.

#### SHORT TITLE, FORM AND INTERPRETATION.

## § 25-3-101. Short title.

**Legal Periodicals.** —  
For note, "Check Kiting: The Inade-

quacy of the Uniform Commercial  
Code," see 1986 Duke L.J. 728 (1986).



**§ 25-3-104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note."**

**CASE NOTES**

**I. GENERAL CONSIDERATION.**

**Interpretation of Negotiable Instrument.** — Where the promissory note is a negotiable instrument within the meaning of this section, interpreta-

tion of the note is governed by the provisions therein. *Smith v. Rushing Constr. Co.*, — N.C. App. —, 353 S.E.2d 692 (1987).

**§ 25-3-110. Payable to order.**

**CASE NOTES**

**Cited** in *State v. First Resort Properties*, 81 N.C. App. 499, 344 S.E.2d 354 (1986).

**§ 25-3-114. Date, antedating, postdating.**

**CASE NOTES**

**Cited** in *State v. First Resort Properties*, 81 N.C. App. 499, 344 S.E.2d 354 (1986).

**§ 25-3-118. Ambiguous terms and rules of construction.**

**CASE NOTES**

**Stated** in *Smith v. Rushing Constr. Co.*, — N.C. App. —, 353 S.E.2d 692 (1987).

**§ 25-3-119. Other writings affecting instrument.**

**CASE NOTES**

**Handwritten agreement** between lessees/obligors and representative of lessor/obligee limiting remedies did not qualify as a defense which could be as-

serted against assignee as a limitation of remedies. *Leasing Serv. Corp. v. Crane*, 804 F.2d 828 (4th Cir. 1986).

## PART 3.

## RIGHTS OF A HOLDER.

## § 25-3-302. Holder in due course.

**Legal Periodicals.** — For note, "Check Kiting: The Inadequacy of the Uniform Commercial Code," see 1986 Duke L.J. 728 (1986).

## § 25-3-306. Rights of one not holder in due course.

**Legal Periodicals.** — For note, "Check Kiting: The Inadequacy of the Uniform Commercial Code," see 1986 Duke L.J. 728 (1986).

## PART 4.

## LIABILITY OF PARTIES.

## § 25-3-417. Warranties on presentment and transfer.

**Legal Periodicals.** — For note, "Check Kiting: The Inadequacy of the Uniform Commercial Code," see 1986 Duke L.J. 728 (1986).

## § 25-3-418. Finality of payment or acceptance.

**Legal Periodicals.** — For note, "Check Kiting: The Inadequacy of the Uniform Commercial Code," see 1986 Duke L.J. 728 (1986).

## § 25-3-419. Conversion of instrument; innocent representative.

## CASE NOTES

## I. GENERAL CONSIDERATION.

**Absolute Liability of Drawee.** — The provision of this section that conversion occurs when an instrument is paid on a forged endorsement and the drawee's liability is the face amount of the instrument was intended as a rule of "absolute liability" of the drawee. *Cartwood Constr. Co. v. Wachovia Bank & Trust Co.*, — N.C. App., 352 S.E.2d 241 (1987).

**Bank's Handling of Instruments as Conversion.** — The bank's acceptance of checks bearing allegedly forged endorsements for deposit in the account did not give rise to a separate action for negligence; rather, the bank's duties regarding its handling of the instruments

were specifically defined under this section, which gave the nonendorsing party an action in conversion and provided a remedy. *Cartwood Constr. Co. v. Wachovia Bank & Trust Co.*, — N.C. App., 352 S.E.2d 241 (1987).

**Test of Conversion.** — In an action by the nonendorsing party, the name of whose president was allegedly forged on six checks, against the bank for conversion under this section, the critical inquiry was whether the bank dealt with the instrument in good faith and in accordance with reasonable commercial standards, not what interest the plaintiff had in the checks; likewise, in an action against the drawee, the plaintiff's interest in the proceeds of the checks was irrelevant. *Cartwood Constr. Co. v.*

Wachovia Bank & Trust Co., — N.C. App. —, 352 S.E.2d 241 (1987).

**Question of Fact.** — Where the nonendorsing party made a prima facie showing of the bank's liability under this section, the bank was not entitled to summary judgment on the issue of conversion; rather, the fact finder should have decided whether the instruments in question were actually paid on a

forged endorsement and, if so, whether the bank used reasonable commercial standards by paying the instruments, thus limiting recovery to the amount of proceeds remaining in its hands. *Cartwood Constr. Co. v. Wachovia Bank & Trust Co.*, — N.C. App. —, 352 S.E.2d 241 (1987).

## PART 5.

### PRESENTMENT, NOTICE OF DISHONOR AND PROTEST.

#### § 25-3-512. Collection of processing fee for returned checks.

A processing fee, not to exceed fifteen dollars (\$15.00), may be charged and collected for checks on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank if at the time the consumer presented the check to the person, a sign:

- (1) was conspicuously posted on or in the immediate vicinity of the cash register;
- (2) was in plain view of anyone paying for goods or services by check;
- (3) was no smaller than 8 by 11 inches; and
- (4) stated the amount of the fee that would be charged for returned checks.

When the drawer sends a check by mail for payment of a debt and the check is dishonored and returned, the processing fee may be collected if the drawer was given prior written notice that a fee would be charged for returned checks. Any document that clearly and conspicuously states the amount of the fee that will be charged for returned checks and is delivered to the drawer or his agent, or is mailed first-class mail to the drawer at his last known address as part of any document requesting payment of a debt satisfies this notice requirement for that payment only.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee. (1981, c. 781, s. 1; 1983, c. 529; 1987, c. 147.)

**Effect of Amendments.** — The 1987 amendment, effective May 7, 1987, substituted "fifteen dollars (\$15.00)" for

"ten dollars (\$10.00)" near the beginning of the introductory paragraph.



ARTICLE 4.

*Bank Deposits and Collections.*

PART 1.

GENERAL PROVISIONS AND DEFINITIONS.

§ 25-4-101. Short title.

**Legal Periodicals.** —

For note, "Check Kiting: The Inade-

quacy of the Uniform Commercial

Code," see 1986 Duke L.J. 728 (1986).

§ 25-4-104. Definitions and index of definitions.

**Legal Periodicals.** — For note,

"Check Kiting: The Inadequacy of the

Uniform Commercial Code," see 1986

Duke L.J. 728 (1986).

§ 25-4-105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank."

CASE NOTES

Cited in Cartwood Constr. Co. v.

Wachovia Bank & Trust Co., — N.C.

App. —, 352 S.E.2d 241 (1987).

PART 2.

COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS.

§ 25-4-213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

**Legal Periodicals.** — For note,

"Check Kiting: The Inadequacy of the

Uniform Commercial Code," see 1986

Duke L.J. 728 (1986).

## PART 3.

## COLLECTION OF ITEMS: PAYOR BANKS.

**§ 25-4-301. Deferred posting; recovery of payment by return of items; time of dishonor.**

**Legal Periodicals.** — For note, Uniform Commercial Code," see 1986 "Check Kiting: The Inadequacy of the Duke L.J. 728 (1986).

**§ 25-4-302. Payor bank's responsibility for late return of item.**

**Legal Periodicals.** — For note, Uniform Commercial Code," see 1986 "Check Kiting: The Inadequacy of the Duke L.J. 728 (1986).

## ARTICLE 8.

*Investment Securities.*

## PART 2.

## ISSUE — ISSUER.

**§ 25-8-204. Effect of issuer's restrictions on transfer.**

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it. (1941, c. 353, s. 15; G.S., s. 55-95; 1955, c. 1371, s. 2; 1965, c. 700, s. 1.)

**Editor's Note.** — The section above is set out to correct an error in the main volume.

## PART 3.

## PURCHASE.

**§ 25-8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.**

## CASE NOTES

Cited in *Lawing v. Lawing*, 81 N.C. App. 159, 344 S.E.2d 100 (1986).

§ 25-8-319. Statute of frauds.

CASE NOTES

Cited in *Forstmann v. Culp*, 648 F. Supp. 1379 (M.D.N.C. 1986).

ARTICLE 9.

*Secured Transactions; Sales of Accounts and Chattel Paper.*

PART 1.

SHORT TITLE, APPLICABILITY AND DEFINITIONS.

§ 25-9-101. Short title.

**Legal Periodicals.** —  
For comment, "Return to the Conservative View of Security Agreements in

Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).

CASE NOTES

Cited in *Leasing Serv. Corp. v. Crane*, 804 F.2d 828 (4th Cir. 1986).

§ 25-9-102. Policy and subject matter of article.

**Legal Periodicals.** —  
For comment, "Return to the Conservative View of Security Agreements in

Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).

CASE NOTES

**Applicability of Article 9.** — This Article applies to a transaction intended to create a security interest, regardless of whom the certificate lists as the owner. *Carter v. Holland* (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

**Security interest in a mobile home** which was moveable, tangible property, was governed by Article 9 of the U.C.C. Section 41-2.5(a), which provides that

when a husband and wife become co-owners of a mobile home, in the absence of anything to the contrary appearing in the instrument of title, they become tenants by the entirety with all the incidents of an estate by the entirety in real property, did not dictate a contrary result. *Joyce v. Cloverbrook Homes, Inc.*, 81 N.C. App. 270, 344 S.E.2d 58, cert. denied, 317 N.C. 704, 347 S.E.2d 42 (1986).



## § 25-9-103. Perfection of security interests in multiple-state transactions.

### CASE NOTES

**Cited in** *Carter v. Holland* (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

## § 25-9-104. Transactions excluded from article.

### CASE NOTES

**Article 9 does not apply where collateral consists of unearned insurance premiums.** In re Universal Motor Express, Inc., 72 Bankr. 208 (Bankr. W.D.N.C. 1987).

**Right of Setoff.** — Subdivision (i) of this section, which specifically excludes any right of setoff from Article 9 of the

UCC, merely removes the right of setoff from the filing and perfection requirements of Article 9 and does not affect the applicability of the Article's priority rules when a security interest is involved. *Branch Banking & Trust Co. v. Columbian Peanut Co.*, 649 F. Supp. 1116 (E.D.N.C. 1986).

## § 25-9-105. Definitions and index of definitions.

**Legal Periodicals.** — For comment, "Return to the Conservative View of Security Agreements in Commercial

Transactions," see 8 Campbell L. Rev. 505 (1986).

### CASE NOTES

**Security interest in a mobile home** which was moveable, tangible property, was governed by Article 9 of the U.C.C. Section 41-2.5(a), which provides that when a husband and wife become co-owners of a mobile home, in the absence of anything to the contrary appearing in the instrument of title, they become ten-

ants by the entirety with all the incidents of an estate by the entirety in real property, did not dictate a contrary result. *Joyce v. Cloverbrook Homes, Inc.*, 81 N.C. App. 270, 344 S.E.2d 58, cert. denied, 317 N.C. 704, 347 S.E.2d 42 (1986).

## § 25-9-109. Classification of goods: "Consumer goods"; "equipment"; "farm products"; "inventory."

### CASE NOTES

**A mobile home is a consumer good.** *Joyce v. Cloverbrook Homes, Inc.*, 81 N.C. App. 270, 344 S.E.2d 58, cert.

denied, 317 N.C. 704, 347 S.E.2d 42 (1986).

## PART 2.

## VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO.

## § 25-9-201. General validity of security agreement.

## CASE NOTES

## I. GENERAL CONSIDERATION.

**Priority of Perfected Security Interest.** — The bank's perfected security interest in the debtor's peanut crop had priority over the right of setoff of the peanut company created subsequent thereto, whereby the company furnished

peanut seed to the debtors in exchange for their agreement to convey a quantity of matured peanuts to the company. *Branch Banking & Trust Co. v. Columbian Peanut Co.*, 649 F. Supp 1116 (E.D.N.C. 1986).

## § 25-9-202. Title to collateral immaterial.

## CASE NOTES

**Applicability of Article 9.** — This Article applies to a transaction intended to create a security interest, regardless of whom the certificate lists as the

owner. *Carter v. Holland* (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

## § 25-9-203. Attachment and enforceability of security interest; proceeds; formal requisites.

**Legal Periodicals.** —

For comment, "Return to the Conservative View of Security Agreements in

Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).

## § 25-9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

## CASE NOTES

**This section applies to leases,** whether or not they constitute secured transactions. *Leasing Serv. Corp. v. Crane*, 804 F.2d 828 (4th Cir. 1986).

This section governed lease of drill and truck, even if the lease was not a transaction intended to create a security interest. *Leasing Serv. Corp. v. Crane*, 804 F.2d 828 (4th Cir. 1986).

**Handwritten agreement** between lessees/obligators and representative of lessor/obligee limiting remedies did not qualify as a defense which could be asserted against assignee as a limitation of remedies. *Leasing Serv. Corp. v. Crane*, 804 F.2d 828 (4th Cir. 1986).

### PART 3.

## RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY.

### § 25-9-301. Persons who take priority over unperfected security interests; rights of "lien creditor."

**Legal Periodicals.** — For comment, "Return to the Conservative View of Security Agreements in Commercial

Transactions," see 8 Campbell L. Rev. 505 (1986).

#### CASE NOTES

Under North Carolina law a judicial lien creditor has priority over an unperfected lien on a personal property. In re Millerburg, 61 Bankr. 125 (Bankr. E.D.N.C. 1986).

One of the positions occupied by the bankruptcy trustee and debtor in posses-

sion is that of judicial lien creditor, and as between a Chapter 11 debtor in possession and a creditor with an unperfected lien on personal property, the debtor in possession will prevail. In re Millerburg, 61 Bankr. 125 (Bankr. E.D.N.C. 1986).

### § 25-9-302. When filing is required to perfect security interests; security interests to which filing provisions of this article do not apply.

**Legal Periodicals.** — For comment, "Return to the Conservative View of Security Agreements in

Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).

#### CASE NOTES

A security interest in a mobile home is subject to the same perfection requirements as an automobile. Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

Cited in In re Millerburg, 61 Bankr. 125 (Bankr. E.D.N.C. 1986).

### § 25-9-303. When security interest is perfected; continuity of perfection.

**Legal Periodicals.** — For comment, "Return to the Conservative View of Security Agreements in

Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).



## § 25-9-306. "Proceeds"; secured party's rights on disposition of collateral.

### CASE NOTES

**"Proceeds".** — Although the peanut company gave value to the debtors at the time of its receipt of the matured peanuts which the debtors had agreed to convey in exchange for peanut seed which had been furnished to them by the company, such value was not "proceeds" to which the bank's security could attach. *Branch Banking & Trust Co. v. Columbian Peanut Co.*, 649 F. Supp. 1116 (E.D.N.C. 1986).

**Buyer Can Not Designate Prior**

**Value Given to Debtor as "Proceeds."** — To allow a buyer to designate prior value given to the debtor as "proceeds" of a subsequent sale of collateral authorized by a secured party would seriously undermine the latter's interest, resulting in commercial uncertainty contrary to the objective of the Uniform Commercial Code. *Branch Banking & Trust Co. v. Columbian Peanut Co.*, 649 F. Supp. 1116 (E.D.N.C. 1986).

## § 25-9-307. Protection of buyers of goods.

### CASE NOTES

**Stated in** *Branch Banking & Trust Co. v. Columbian Peanut Co.*, 649 F. Supp. 1116 (E.D.N.C. 1986).

## § 25-9-312. Priorities among conflicting security interest in the same collateral.

**Legal Periodicals.** — For comment, "Return to the Conservative View of Security Agreements in Commercial

Transactions," see 8 Campbell L. Rev. 505 (1986).

## § 25-9-313. Priority of security interests in fixtures.

**Legal Periodicals.** —

For comment, "Return to the Conservative View of Security Agreements in

Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).

## § 25-9-315. Priority when goods are commingled or processed.

**Legal Periodicals.** — For comment, "Return to the Conservative View of Security Agreements in Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).

For note, "Check Kiting: The Inadequacy of the Uniform Commercial Code," see 1986 Duke L.J. 728 (1986).

## PART 4.

## FILING.

# § 25-9-402. Formal requisites of financing statement; amendments; mortgage as financing statement.

## Legal Periodicals. —

For comment, "Return to the Conservative View of Security Agreements in

Commercial Transactions," see 8 Campbell L. Rev. 505 (1986).

## CASE NOTES

Quoted in *Carter v. Holland* (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

# § 25-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement is eight dollars (\$8.00).

(1866-7, c. 1, s. 1; 1872-3, c. 133, s. 1; Code, s. 1799; 1893, c. 9; Rev., s. 2052; C.S., s. 2480; 1925, c. 302, s. 1; 1927, c. 22; 1935, c. 205; 1945, c. 182, ss. 2, 4; c. 196, s. 2; 1955, c. 386, ss. 1, 2; c. 816; 1957, cc. 564, 999; 1961, c. 574; 1965, c. 700, s. 1; 1967, c. 562, s. 1; 1969, c. 1115, s. 1; 1971, c. 1170; 1973, c. 1316, s. 1; 1975, c. 862, s. 7; 1977, cc. 156, 295; 1983, c. 713, s. 23; 1987, c. 792, s. 6.)

**Only Part of Section Set Out. —** As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments. —** The 1987 amendment, effective October 1, 1987, substituted "eight dollars (\$8.00)" for "five dollars (\$5.00)" in subsection (5), deleted "for an approved statutory form statement as prescribed in G.S. 25-9-402 when printed on a standard-size form

approved by the Secretary of State, and for all other statements, the fee is ten dollars (\$10.00)" at the end of subdivision (5), and deleted a former second sentence of that subdivision, which read "There shall be an additional fee of two dollars (\$2.00) for each financing statement and continuation statement subject to subsection (5) of G.S. 25-9-402."

# § 25-9-405. Assignment of security interest; duties of filing officer; fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in G.S. 25-9-403(4). The uniform fee for filing, indexing,

and furnishing filing data for a financing statement so indicating an assignment is eight dollars (\$8.00).

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the Uniform Commercial Code index of the financing statement, and in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, he shall index in the real estate index the assignment under the name of the assignor as grantor and, to the extent that the law of this State provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment is eight dollars (\$8.00). Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of G.S. 25-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of the State other than this Chapter.

(1965, c. 700, s. 1; 1967, c. 24, s. 23; 1969, c. 1115, s. 1; 1973, c. 1316, ss. 4, 5; 1975, c. 862, s. 7; 1983, c. 713, ss. 24, 25; 1987, c. 792, ss. 7, 8.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, substituted "eight dollars (\$8.00)" for "five dollars (\$5.00)" and deleted "when submitted on standard-size form approved by the Secretary of State, and for all other statements, the fee is ten dollars (\$10.00)" at the end of subdivision (1), substituted "eight dollars (\$8.00)"

for "five dollars (\$5.00)" and deleted "when submitted on a standard-size form approved by the Secretary of State, and for all other statements, the fee is ten dollars (\$10.00)" at the end of the present next-to-last sentence of subsection (2), and deleted a former next-to-last sentence of that subsection, which read "When the assignment is of a financing statement subject to subsection (5) of G.S. 29-5-402, there shall be an additional fee of two dollars (\$2.00)."

## § 25-9-406. Release of collateral; duties of filing officer; fees.

A secured party of record may, by his signed statement, release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed



by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release is eight dollars (\$8.00). (1965, c. 700, s. 1; 1967, c. 24, s. 25; 1969, c. 1115, s. 1; 1973, c. 1316, s. 6; 1975, c. 862, s. 7; 1983, c. 713, s. 26; 1987, c. 792, s. 9.)

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, substituted "eight dollars (\$8.00)" for "five dollars (\$5.00)" at the end of the section, deleted "when submitted on standard-size form approved by the Secretary of State, and for all other state-

ments, the fee is ten dollars (\$10.00)" thereafter, and deleted a former final sentence, which read "There shall be an additional fee of two dollars (\$2.00) when the statement of release affects a financing statement subject to subsection (5) of G.S. 25-9-402."

### § 25-9-407. Information from filing officer.

(2) Upon request of any person, the filing officer shall issue his certificate for which he shall not be liable showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be eight dollars (\$8.00). Where the Uniform Commercial Code index has been automated, the filing officer shall issue a computer print-out of the index entries for a particular debtor for a fee of eight dollars (\$8.00). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar (\$1.00) per page. (1965, c. 700, s. 1; 1967, c. 562, s. 1; 1973, c. 1316, s. 7; 1975, c. 862, s. 7; 1983, c. 713, ss. 27, 28; 1987, c. 792, s. 10.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, substituted "eight dollars (\$8.00)" for "five dollars (\$5.00)" and deleted "plus one dollar (\$1.00) for each financing

statement and for each statement of assignment reported therein" thereafter at the end of the second sentence of subsection (2), and substituted "eight dollars (\$8.00)" for "five dollars (\$5.00)" at the end of the third sentence of that subsection.



## PART 5.

## DEFAULT.

**§ 25-9-504. Secured party's right to dispose of collateral after default; effect of disposition.**

## CASE NOTES

**A person who is liable to a secured party under a repurchase agreement and takes possession** of collateral pursuant to an agreement with the secured party has the rights and duties of a secured party. *Joyce v. Cloverbrook*

*Homes, Inc.*, 81 N.C. App. 270, 344 S.E.2d 58, cert. denied, 317 N.C. 704, 347 S.E.2d 42 (1986).

**Cited** in *Carter v. Holland* (In re *Carraway*), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

**§ 25-9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.**

## CASE NOTES

**Cited** in *Carter v. Holland* (In re *Carraway*), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

**§ 25-9-506. Debtor's right to redeem collateral.**

## CASE NOTES

**Cited** in *Northwestern Bank v. Roseman*, 81 N.C. App. 228, 344 S.E.2d 120 (1986); *Carter v. Holland* (In re *Carr-*

*raway*), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

**§ 25-9-507. Secured party’s liability for failure to comply with this part.**

**CASE NOTES**

<p><b>Mobile Home.</b> — The trial court did not err by applying the consumer goods provision of subsection (1) of this section to a case involving failure to give notice</p>	<p>of sale of a mobile home. <i>Joyce v. Cloverbrook Homes, Inc.</i>, 81 N.C. App. 270, 344 S.E.2d 58, cert. denied, 317 N.C. 704, 347 S.E.2d 42 (1986).</p>
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## Chapter 25A.

### Retail Installment Sales Act.

Sec.

25A-2. "Consumer credit sale" defined.

#### § 25A-1. Scope of act.

##### CASE NOTES

**Class Actions Allowed.** — When the General Assembly has wished to prevent class actions to enforce statutory claims for relief, where the relief sought was personal and penal in nature, it has said so expressly and unequivocally. The failure of the General Assembly to expressly prohibit class actions to enforce

this statute convinces the Supreme Court that it intended to allow them for such purposes. *Crow v. Citicorp Acceptance Co.*, — N.C. —, 354 S.E.2d 459 (1987).

**Cited in** *Addison v. Britt*, 83 N.C. App. 418, 350 S.E.2d 158 (1986).

#### § 25A-2. "Consumer credit sale" defined.

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

- (1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,
- (2) The buyer is a natural person,
- (3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,
- (4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and
- (5) The amount financed does not exceed twenty-five thousand dollars (\$25,000) or, in the case of a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed.

(1971, c. 796, s. 1; 1979, c. 706, s. 1; 1981, c. 970, s. 2; 1983, c. 686, ss. 2, 3; 1987, c. 282, s. 5.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987

amendment, effective June 4, 1987, substituted "manufactured home" for "mobile home" in subdivision (a)(5).

#### § 25A-28. Form of consumer credit installment sale contract.

**Legal Periodicals.** — For survey of North Carolina construction law, with particular reference to unfair or decep-

tive acts or practices, see 21 Wake Forest L. Rev. 633 (1986).

**§ 25A-39. Buyer's right to cancel.**

**Legal Periodicals.** — For survey of North Carolina construction law, with particular reference to unfair or deceptive acts or practices, see 21 Wake Forest L. Rev. 633 (1986).

**§ 25A-40. Form of agreement or offer; statement of buyer's rights.**

**Legal Periodicals.** — For survey of North Carolina construction law, with particular reference to unfair or deceptive acts or practices, see 21 Wake Forest L. Rev. 633 (1986).



STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*November 1, 1987*

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG  
*Attorney General of North Carolina*

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State of New York  
In SENATE,  
January 10, 1901.

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